

HALL & ASSOCIATES

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November 7, 2017

Via FOIA Online

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

RE: FOIA Request for Records Related to EPA Letters to Congressman Charlie Dent (PA-15) Concerning Clarification of EPA's Position on Blending

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2.

Background

On April 27, 2017, Congressman Charlie Dent (PA-15) sent USEPA HQ a letter requesting clarification of EPA's position on the legality of blending under federal law (Attachment 1). Several Pennsylvania municipal wastewater facilities remain interested in blending to increase peak flow capacity but are uncertain of EPA's position regarding Clean Water Act compliance for such facility modifications. EPA Region 3 responded to Congressman Dent by letter dated June 20, 2017 (Att. 2). On July 20, 2017, Congressman Dent sent EPA a follow-up letter, seeking further clarification (Att. 3). EPA HQ responded to the July 20 letter on October 27, 2017 (Att. 4).

Request

This request seeks:

1. All Agency records, correspondence, or communications related to the development of the June 20, 2017 or October 27, 2017 response letters to Congressman Dent.

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2. All records, correspondence, or communications which identify which Agency personnel were involved, in any way, in the development of the June 20, 2017 or October 27, 2017 response letters to Congressman Dent.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$100.00. Please duplicate the records that are responsive to this request and send it to the undersigned at the above address. If the requested record is withheld based upon any asserted privilege, please identify the basis for the non-disclosure.

If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that only the necessary document is duplicated.

Respectfully,

//s// Ben Kirby
Benjamin M. Kirby

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Attachment 1 –

April 27, 2017 Letter - Congressman Charlie Dent (PA-15) to USEPA HQ

CHARLES W. DENT
15TH DISTRICT, PENNSYLVANIA

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WASHINGTON, DC 20515
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Congress of the United States
House of Representatives
Washington, DC 20515-3815

April 27, 2017

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON
MILITARY CONSTRUCTION, VETERANS
AFFAIRS, AND RELATED AGENCIES
CHAIRMAN
SUBCOMMITTEE ON STATE,
FOREIGN OPERATIONS,
AND RELATED PROGRAMS
SUBCOMMITTEE ON TRANSPORTATION,
HOUSING AND URBAN DEVELOPMENT
AND RELATED AGENCIES

The Honorable Scott Pruitt
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Pruitt,

I am writing to request an update on the City of Allentown's and Lehigh County Authority's request to use blending as an option within their wastewater treatment process at Kline's Island to address wet weather flows. They have informed me that utilizing this technique would enable them to meet required effluent permit limits, and would also limit the cost of doing so as compared to alternative methods. By having a final determination on blending, the City and the Authority would be able to move forward with the planning of their treatment solution.

It is my understanding that the EPA has not issued any official nation-wide policy on the use of blending in wastewater treatment. This uncertainty has created difficulties for groups that depend on this guidance, such as those in my district.

I appreciate your willingness to communicate and engage with the City of Allentown and Lehigh County Authority on this issue. Please let me know if there is any update on the status of their inquiry, or if there is any additional information that they can provide to assist you in your review.

With best wishes,

Sincerely,



Charles W. Dent
Member of Congress

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FAX: (610) 770-3498

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(717) 533-3959
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Attachment 2 –

June 20, 2017 Letter - EPA Region 3 to Congressman Dent



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

JUN 20 2017

The Honorable Charles W. Dent
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Dent:

Thank you for your April 27, 2017 letter to U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt concerning the City of Allentown and the Lehigh County Authority (City/LCA). You have asked for an update on the status of these entities' inquiry regarding the use of blending (a form of "bypass" under Clean Water Act regulations) as an operational option for managing flows at the Kline's Island wastewater treatment plant (WWTP).

The Pennsylvania Department of Environmental Protection (PADEP) is authorized to administer the National Pollutant Discharge Elimination System (NPDES) Program, and therefore, acts as the permitting authority for NPDES permits in Pennsylvania. EPA oversees PADEP's role as the permitting authority by reviewing draft NPDES permits for consistency with federal regulations. Additionally, the City/LCA and several other Pennsylvania municipalities whose wastewater is routed to the Kline's Island WWTP for treatment are subject to an EPA Clean Water Act administrative order that requires these municipalities by December 31, 2017, to develop a plan to eliminate the discharge of raw sewage into local waterbodies from the sewer system. In connection with this order, EPA and PADEP have met on several occasions with the City/LCA to discuss their progress and options for achieving compliance. In addition to collection system improvements, these options include constructing an equalization tank and a number of other upgrades at Kline's Island to increase peak flow capacity and improve plant performance, and the possible use of blending. EPA and PADEP met with the City/LCA on June 14, 2017 and further discussed their progress in developing a plan. Your letter asked if there is any further information the City/LCA should provide EPA at this time. If EPA or PADEP requires any further information as a result of our recent meeting, we will contact the City/LCA.

On October 22, 2016, PADEP published notice of a revised draft NPDES permit for the City/LCA (NPDES Permit Number PA0026000) in the Pennsylvania Bulletin seeking public comment. In the draft Fact Sheet accompanying the permit, PADEP stated: "The Department cannot grant your request for approval of an anticipated bypass for flows to [sic] that exceed 95 MGD. Looking forward, the Department would not be able to approve any proposal that would involve routine wet weather related bypassing of secondary treatment as such a practice would not comply with the state's regulations for secondary treatment for sewage [25 Pa. Code, Section 92a.47(a)]. Also, from a



compliance standpoint any post construction bypassing would need to be evaluated on a case-by-case basis." EPA provided comments on other aspects of the draft permit on November 3, 2016, but had no comments related to PADEP's bypassing discussion as quoted above in the Fact Sheet. It is EPA's understanding that PADEP received other comments on the draft permit, but to date PADEP has taken no further action on the draft permit.

In the meantime, on October 27, 2016, the City/LCA sued PADEP before the Commonwealth's Environmental Hearing Board (EHB) (EHB Docket No. 2016-144-M), and that litigation is pending. In its suit, the City/LCA has asserted that remarks by a PADEP employee regarding blending at a September 12, 2016 meeting with EPA, PADEP and the City/LCA constitute final agency action by PADEP. The remarks were referenced in a September 30, 2016 letter from EPA to the City/LCA. PADEP asserts that this letter does not constitute final agency action and has filed a motion to dismiss for lack of jurisdiction. Briefing on the motion has concluded and the motion is now awaiting a decision by the EHB.

I trust that this is helpful to you in understanding the current status of this matter. If you have any questions, please do not hesitate to contact me or have your staff contact Ms. Kinshasa Brown, EPA's Pennsylvania Liaison, at 215-814-5404.

Sincerely,



Cecil Rodrigues
Acting Regional Administrator

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Attachment 3 –

July 20, 2017 Letter - Congressman Dent to USEPA HQ

Congress of the United States
House of Representatives
Washington, DC 20515-3815

July 20, 2017

The Honorable E. Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Pruitt:

On April 27, 2017 I transmitted a letter to you seeking information on a regulatory issue impacting local communities in the Lehigh Valley. Specifically, I sought clarification on their ability, under federal law, to use "blending" to process greater peak wastewater flows. The issue raised was triggered by a 2013 8th Circuit Court of Appeals decision vacating EPA's decision to classify blending as a form of bypass under existing federal NPDES rules. Thereafter, I understand that the prior administration decided that it could continue to impose its more restrictive interpretation outside of the 8th Circuit. It is my understanding that significant confusion has remained on the regulatory status of blending because EPA has informed some that a final agency decision to regulate blending as a bypass outside the 8th Circuit had not been made. Because the local communities wanted to employ blending to achieve Clean Water Act compliance, your assistance in resolving the matter was requested.

In response to my inquiry, my office received the attached correspondence, dated June 20, 2017, from EPA Region III Acting Regional Administrator Cecil Rodrigues. The letter briefly characterized blending as "a form of 'bypass' under Clean Water Act regulations" but provided no other information regarding the basis of EPA's position. The correspondence appears to confirm that the use of blending to process greater peak flows would be declared unlawful (i.e., a bypass) under the Clean Water Act, regardless of the state's regulatory posture elsewhere discussed in this letter. However, there was no indication whether this is merely the Region's opinion, or whether it also reflected the EPA Headquarters' position. To ensure that the regulated community is properly informed on minimum federal regulatory requirements applicable to NPDES permitting, further clarification directly from your office is respectfully requested.

Please inform me whether your office has determined that, as a matter of federal law, blending will still be classified as a "form of bypass," under existing regulations outside of the 8th Circuit.

Thank you for your prompt attention to this clarification request.

Sincerely,



Charles W. Dent
Member of Congress

Attachment

DISTRICT OFFICES

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Attachment 4 –

October 27, 2017 Letter - USEPA HQ to Congressman Dent



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 27 2017

OFFICE OF WATER

The Honorable Charles W. Dent
House of Representatives
Washington, D.C. 20515

Dear Congressman Dent:

Thank you for your July 20, 2017, letter to the U.S. Environmental Protection Agency seeking additional clarification on the use of blending at wastewater treatment facilities.

As you correctly stated in your original April 27, 2017, letter, the EPA has not issued a nationwide policy on the use of blending in wastewater treatment. Your most recent letter indicates that Acting EPA Region III Administrator Cecil Rodrigues's June 20, 2017, response may be confusing on this issue. In his letter, Mr. Rodrigues generally described the Commonwealth of Pennsylvania's ongoing permitting efforts with respect to the Kline Island wastewater treatment plant and discussions with the EPA concerning a plan required under a Clean Water Act administrative order to eliminate raw sewage discharges. In the course of summarizing your earlier letter, Mr. Rodrigues referred to blending as a "form of bypass under Clean Water Act regulations."

It was not the Agency's intent to state or imply that it has a categorical position regarding how the Agency's regulations apply with regard to blending outside the 8th Circuit in light of the court's decision in *Iowa League of Cities v. EPA*, 711 F.3d 844 (2013). Rather, the agency continues to save those questions for permitting or other case-specific contexts. The EPA continues to evaluate any issues related to *Iowa League* outside the 8th Circuit on a facility-specific basis.

I assure you that the EPA is committed to its efforts to balance protection of public health and the environment with the development of creative solutions for addressing the pressures faced by many aging POTW systems challenged during periods of precipitation.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Matt Klasen in the EPA's Office of Congressional and Intergovernmental Relations at Klasen.Matthew@epa.gov or (202) 566-0780.

Sincerely,

A handwritten signature in black ink, which appears to read "Michael Shapiro", is positioned above the typed name.

Michael H. Shapiro
Acting Assistant Administrator